

State of South Dakota

EIGHTY-EIGHTH SESSION LEGISLATIVE ASSEMBLY, 2013

295U0069

HOUSE BILL NO. 3

Introduced by: _____

1 FOR AN ACT ENTITLED, An Act to provide for mediation between mineral developers and
2 surface owners in certain disputes over surface depredation.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 45-5A be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The Department of Agriculture shall administer a surface depredation mediation program
7 to provide assistance to mineral developers and surface owners who seek to use mediation as
8 a method for resolving disputes over the determination of damages pursuant to § 45-5A-4.

9 The secretary of the Department of Agriculture shall promulgate rules pursuant to chapter
10 1-26 necessary for mediation, including the establishment of fees, training requirements for
11 mediators, mediation request forms, and any other mediation procedures as may be necessary
12 for the prompt and expeditious mediation of surface depredation disputes.

13 Section 2. That chapter 45-5A be amended by adding thereto a NEW SECTION to read as
14 follows:

15 All staff services required by the surface depredation mediation program shall be provided
16 by the Department of Agriculture. The secretary of agriculture may employ a director of surface



1 degradation mediation services and such other agents and employees as the secretary deems
2 necessary. The director shall serve at the pleasure of the secretary of agriculture. The mediation
3 services shall be administered under the direction and supervision of the Department of
4 Agriculture. All expenses incurred in carrying on the work of the surface degradation mediation
5 program, including the per diem and expenses of the staff, salaries, contract payments, and any
6 other items of expense shall be paid out of funds appropriated or otherwise made available to
7 the surface degradation mediation operating fund.

8 Section 3. That chapter 45-5A be amended by adding thereto a NEW SECTION to read as
9 follows:

10 Any fees provided under this Act and by rule shall be borne equally between the mineral
11 developer and the surface owner. Such fees shall be deposited in the surface degradation
12 mediation operating fund which is hereby created. All money in the surface degradation
13 mediation operating fund created by this section is continuously appropriated for the purposes
14 of administering the surface degradation mediation program. All funds received by the surface
15 degradation mediation program shall be set forth in an informational budget as described in
16 § 4-7-7.2 and be annually reviewed by the Legislature. Any disbursements from the surface
17 degradation mediation operating fund shall be by authorization of the secretary of agriculture.

18 Section 4. That chapter 45-5A be amended by adding thereto a NEW SECTION to read as
19 follows:

20 The Department of Agriculture, in the administration of this Act, may contract with one or
21 more established agencies of state government, nonprofit corporations, or individuals to provide
22 mediation services for mineral developers and surface owners.

23 Section 5. That chapter 45-5A be amended by adding thereto a NEW SECTION to read as
24 follows:

1 The director of the surface depredation mediation program shall promptly, upon the request
2 of either party for mediation services, send a mediation meeting notice to the mineral developers
3 and surface owners, setting a time and place for an initial mediation meeting between the
4 mineral developers and surface owners, and a mediator. An initial mediation meeting shall be
5 held within twenty-one days of the issuance of the mediation meeting notice.

6 Section 6. That chapter 45-5A be amended by adding thereto a NEW SECTION to read as
7 follows:

8 The total mediation period shall be for a term of forty-two days after the date the director
9 of the surface depredation mediation program issues the notice to the parties. The director of the
10 surface depredation mediation program shall issue a notice to both parties within three business
11 days following receipt of the request for mediation. The mediator may, after the initial meeting,
12 schedule additional mediation meetings during the mediation period.

13 Section 7. That chapter 45-5A be amended by adding thereto a NEW SECTION to read as
14 follows:

15 If the mineral developer and the surface owner consent, mediation may continue beyond the
16 forty-two day mediation period with the same force and effect as though held within the
17 forty-two day period.

18 Any agreement reached between the mineral developer and the surface owner as a result of
19 mediation shall be drafted into a written agreement. If signed by the mineral developer and the
20 surface owner, the agreement shall constitute a binding contract, and the mediator shall so
21 certify.

22 Section 8. That chapter 45-5A be amended by adding thereto a NEW SECTION to read as
23 follows:

24 All information regarding the dispute between the mineral developers and the surface

1 owners which is created, collected, or maintained by the director of the surface depredation
2 mediation program pursuant to the terms of this Act or disclosed to the mediator are not public
3 records and are confidential and discussions with the mediators are privileged communications.

4 All mediation meetings, and all mediation activities provided by this Act are exempt from
5 the provisions of chapter 1-27.

6 Section 9. That chapter 45-5A be amended by adding thereto a NEW SECTION to read as
7 follows:

8 Any person serving as a mediator pursuant to this Act is immune from civil liability in any
9 action brought in any court in this state on the basis of any act or omission resulting in damage
10 or injury if the individual was acting in good faith, in a reasonable and prudent manner, and
11 within the scope of such individual's official functions and duties as a mediator.